Logically, nothing can be said for these two lines of decisions. Perhaps they may be explained as a straining to depart from the true rule in cases where it works hardship. For it does work hardship in certain cases: there are certain interlocutory decisions which, if erroneous, cause prejudice that cannot be removed by reversal on appeal from final decision.[20] The proper remedy would be to amend the rule[21] so as to allow appeal from interlocutory decisions in those cases. But courts could not do that, so they seem to have reached the same result by applying final in senses quite foreign to the true sense of the rule. Some courts must have realized that they were doing this, for one finds such telltale expressions as "final for purposes of appeal"[22] — a sort of constructive finality. And once these other senses are admitted at all, it then becomes necessary to draw fine distinctions to limit their application. The natural result of such a process has been confusion. The state of the law on this subject aptly illustrates the baneful results that follow where courts attempt to accomplish indirectly what they cannot accomplish directly.

BOOK REVIEWS

MARINE INSURANCE: ITS PRINCIPLES AND PRACTICE. By William B. Winter New York: McGraw Hill Book Company, Incorporated. 1919. pp. 433.

In a form compact and serviceable are here set forth the substance of the author's course of lectures delivered in the School of Commerce of the New York University. Besides treating of the history and theory of this branch of insurance, Mr. Winter explains in full administrative detail the practical management of a modern insurance corporation, in which field he speaks with the authority of his own official connection with one of the largest marine insurance companies in this country. The work is not a law treatise. In a clear and ordered arrangement he outlines the historic growth of marine insurance in this country and shows how its scope has been varied to meet the multiplied requirements of present-day commerce. But even such a manual cannot entirely ignore the controverted historical question of where sea insurance began.

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times been held final: decree granting alimony *pendente lite*, Daniels *v.* Daniels, 9 Col. 133, 10 Pac. 657 (1886); *contra* Beatty *v.* Beatty, 105 Va. 213, 53 S. E. 2 (1906); judgment dismissing an attachment, Bruce *v.* Conyers, 54 Ga. 678 (1875); *contra* Cutter *v.* Gumberts, 8 Ark. 449 (1848); order appointing a receiver to take possession at once. Clark *v.* Raymond, 84 Ia. 251, 50 N. W. 1068 (1892); *contra* Kansas Rolling Mill Co. *v.* A. T. & Santa Fe Ry. Co., 31 Kan. 90, 1 Pac. 274 (1883); order removing or refusing to remove a cause to another court, McMillan *v.* State, 68 Md. 307 (1887); *contra* Jackson *v.* Alabama, etc, Ry. Co., 58 Miss. 648 (1881).

[20] And the rule also works badly in the case of interlocutory decisions which call for extended accounting that is found to be mere time wasted if the decision is later reversed. This situation has frequently arisen in patent litigation. See Richmond *v.* Atwood, 52 Fed. 10 (1892).

[21] The rule has been changed by statute in England and in many of the United States. See, for example, JUD. CODE, § 129; COMP. STAT., § 1121, allowing appeal in certain cases from interlocutory orders granting an injunction or appointing a receiver.

[22] See Brush Electric Co. *v.* Electric Improvement Co., note 16, *supra*, at p. 559. And in Forgay *v.* Conrad, note 13, *supra*, at p. 203, the court, speaking through Taney, C. J., although holding the decree final, said: "Undoubtedly it is not final in the strict technical sense of the term."

Mr. Winter rather inclines to the view of English writers like Martin, the historian of the London Lloyds, who speak chiefly of the sources in northern Europe, and treat the Hanseatic League and countries nearer Great Britain as the pioneer insurers of sea risks. But the first mention of a policy of insurance in England is found among the Admiralty records, in the case of Broke *v.* Maynard, "Select Pleas of Admiralty" (Selden Society), Vol. II, 47, in which a suit in admiralty was brought in 1547 on a policy written in Italian, but signed in English, insuring a vessel from Cadiz to London. Like the Italian origin of the word "policy," the circumstance that this insurance contract was according to a form in that language, though signed by underwriters with English names, tends to show the early prominence of Italy in this new field. The fact that insurance in Genoa had reached such a point of development that a local statute was passed prohibiting insurance of foreign vessels, and that after what may be supposed to have been a full trial of this protective measure it had to be repealed in 1408 — all demonstrate how early such insurance was organized and in successful activity in Italian seaports. Mr. Winter tells us of the legislation of Barcelona (1435–1484), which being dispersed over Europe together with the Consolato, became gradually accepted as models of insurance legislation.

But the historical introduction has also an interesting summary of marine underwriting in this country. Marine insurers, as individuals and partnerships, were operating in New York in 1759. The first incorporation was in 1792, when the Insurance Company of North America was chartered in Philadelphia. The gradual disappearance of local marine insurance corporations between 1870 and 1900 is attributed to the effects of foreign competition, with the advantage of the uniform British policy and the financial ability of the London insurers to write large amounts.

As has been noted, this is not a treatise on Insurance Law. But it has a high place in supplying to lawyers and courts the practical results of underwriting. In the preface to the first edition of his work on Insurance in 1823, Mr. Phillips gracefully recorded his great obligations to Christian Mayer, President of the Patapsco Insurance Company of Baltimore, and to George Cabot, President of the Boston Marine Insurance Company. Ever since Lord Mansfield's day the law of marine insurance through text writers and the courts has been kept in touch with the practical methods and usages of underwriting.

The work follows the popular familiar words of business and underwriting. But for that reason these terms are liable to give an erroneous impression. Mr. Winter writes (p. 144) of "collision," that it may be vessel with vessel or one vessel with an iceberg "or with some floating or *stationary* object." This seems to extend the term beyond its accepted legal purport. While the decisions in this country do not narrow it as closely as in England, where it is confined to the contact of two objects both of which are navigable (Chandler *v.* Blogg, [1898] 1 Q. B. 32), the term in insurance is still limited to the vessels' impact with other *floating* objects, and does not generally apply to impact with those that are stationary. (Newtown Creek Towing Co. *v.* Aetna Ins. Co., 163 N. Y. 114, 116.)

The chief interest of the book is the topic of War Insurance, where many new and important heads are briefly mentioned. The underwriters' problems were rendered more intricate by the British exercise of the right of search, leading to efforts by neutral carriers to escape such delays by guarantees of the cargo's neutrality through export licenses at ports of shipment. Here is opened an additional field for new treatment of the law of marine insurance, connected with that of prize.

The author's comments on the effects of the war are of especial interest in his reference to Government War Insurance Bureaus. The administrative powers of the United States, as well as of Great Britain, entered into direct

competition with private insurers. This naturally required both skilled underwriting experience and delicate management, so as not to demoralize the underwriting market. It is pleasant to read from Mr. Winter, as from one who might have stood as an adverse critic, that: "The government war insurance schemes were therefore welcomed by the underwriting fraternity, and their conduct was entrusted to some of the ablest underwriters in the various countries" (p. 279). Happily, this led to a rare and exceptional outcome of governmental activity in a new field. In the United States the bureau apparently has proved profitable to the government, without injurious effects to the commercial insurer.

The author also touches on the subject of General Average, and considers the recurring suggestion that later maritime developments might perhaps do away with this intricate detail in fixing the final incidence and apportionment of losses. From a legal and theoretical standard such a dropping of the final settlement would leave the actual situation of the interest involved at very loose ends. The general average adjustment generally affects the insurers. But it applies also to all the associated interests, both insured and uninsured, in the common adventure, who have shared in the common peril or incurred sacrifices to which others should contribute. Not to have this concluding adjustment would leave the parties with rights denied satisfaction, and might lead to resort to courts instead of to this ancient remedy through adjustment by experts. But Mr. Winter also brings up a very practical consideration to reinforce the legal side of the question. This is that the law of general average has had "a salutary effect in preventing the unnecessary destruction of property through jettison, or otherwise to save vessels in positions of peril" (p. 300). Any attempt at a substitute for it seems remote and speculative under conditions of private ownership of vessels and cargoes.

In the appendix are printed various standard insurance and average forms with the text of the British Marine Insurance Act of 1906, followed by the Gambling Policies Act of 1909, with our Harter Act of 1893, and the York-Antwerp Rules of 1890. The book is well indexed. It should find place in both professional and business libraries.

HARRINGTON PUTNAM.

NEW YORK.

BUSINESS LAW, AN ELEMENTARY TREATISE. By Alfred W. Bays. New York: The Macmillan Company. 1919. pp. ix, 311. 8vo.

BUSINESS LAW, A TEXT-BOOK FOR SCHOOLS OF BUSINESS ADMINISTRATION. By Thomas Conyngton and Louis O. Bergh. New York: The Ronald Press Company. 1920. pp. xix, 431. 8vo.

Every year since the opening of the twentieth century has witnessed the production of from two to half a dozen books on business law intended for the use of business students. Though they differ widely in their power for mischief — for the little information they give the layman is certainly a dangerous thing — all of them have a certain family resemblance, which begins to be apparent in the titles and runs through the prefaces, tables of contents, mechanical features and style, down to the very end of the index. A word on some of these features as exemplified in two of the latest, and on the whole two of the best, of these texts may be suggestive to the lawyer as well as to the teacher of business law.

The title "Business Law" seems to have entirely superseded the older "*Lex Mercatoria*," of which Malynes (1622) and Bewes (1751) are the exponents, as well as the later "Mercantile Law," on which John William Smith's Compendium (1834) was the best known, and "Commercial Law" the popular title of